ATTORNEY FOR APPELLANT:

STEVEN KNECHT
Vonderheide & Knecht, P.C.
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SHAWN D. YOAKUM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0803-PC-244
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0203-FB-10

October 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Shawn Yoakum appeals his sentence following his conviction for Armed Robbery, a Class B felony. He presents two issues for our review:

1. Whether the trial court abused its discretion when it sentenced him.

2. Whether his sentence is inappropriate in light of his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 19, 2002, Yoakum and his brother entered a Village Pantry in Lafayette. Yoakum was wearing a ski mask and brandishing a gun when he demanded money and food stamps from the cashier. After the cashier complied, Yoakum fled the scene. Police later found him hiding in a storage shed.

The State charged Yoakum with eleven counts stemming from the robbery. Yoakum ultimately pleaded guilty to armed robbery, a Class B felony, and the State dismissed the other charges in exchange for the plea. The parties' plea agreement also provided that the State would dismiss a petition to revoke probation in another case. And the agreement left sentencing open to the trial court's discretion, but the parties agreed that the executed sentence could not exceed fifteen years.

At sentencing, the trial court identified the following mitigators: Yoakum obtained his GED; and he suffers from Attention Deficit Disorder ("ADD"). The court identified the following aggravators: Yoakum's criminal history; his recent probation violation; and that he is in need of correctional or rehabilitative treatment that can best be provided by his commitment to a penal facility. The trial court found that the aggravators

outweighed the mitigators and imposed a twenty year sentence, with five years suspended to probation. This belated appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Yoakum contends that the trial court abused its discretion when it imposed the maximum sentence.[1] The determination of the appropriate sentence rests within the discretion of the trial court, and we will not reverse the trial court's determination absent a showing of manifest abuse of that discretion. Bacher v. State, 722 N.E.2d 799, 801 (Ind. 2000). The trial court's wide discretion extends to determining whether to increase the presumptive sentence, to impose consecutive sentences on multiple convictions, or both. Singer v. State, 674 N.E.2d 11, 13 (Ind. Ct. App. 1996).

The presumptive sentence for a Class B felony is ten years, and the trial court is permitted to add up to ten years for aggravating circumstances. See Ind. Code § 35-50-2-5. Here, again, the trial court identified two mitigators, namely, that Yoakum obtained his GED and that he suffers from ADD. And the trial court identified three aggravators, namely, his criminal history, his recent probation violation, and his need for correctional or rehabilitative treatment that can best be provided by his commitment to a penal facility. The trial court found that the aggravators outweighed the mitigators and imposed a twenty year sentence, with five years suspended to probation.

Yoakum first contends that one of the listed aggravators is invalid. In particular, he maintains that the trial court erred when it did not explain why Yoakum is in need of

[1] Because Yoakum committed the instant crime in 2002, the presumptive sentencing scheme applies.

correctional or rehabilitative treatment that can best be provided by his commitment to a penal facility. While Yoakum is correct that such an explanation is required, see Loyd v. State, 787 N.E.2d 953, 961 (Ind. Ct. App. 2003), we will hold the aggravator valid, "even without providing a specific reason[,] where the trial court 'engage[d] in a lengthy and detailed discussion of considerations for sentencing and actual aggravating factors.'" Roney v. State, 872 N.E.2d 192, 199 (Ind. Ct. App. 2007) (quoting Hornbostel v. State, 757 N.E.2d 170, 184 (Ind. Ct. App. 2001), trans. denied), trans. denied. Here, the trial court discussed the details of Yoakum's personal and criminal history contained in the presentence investigation report with Yoakum at sentencing and otherwise engaged in a detailed discussion of considerations for sentencing and aggravating factors. We hold that the challenged aggravator is valid.

Yoakum next contends that the trial court gave too much weight to his criminal history. He maintains that his prior convictions are not related to the instant offense and are remote in time. But Yoakum's criminal history is significant, as it consists of four juvenile adjudications for what would have been felonies if committed by an adult (three for theft and one for burglary) and three felony convictions (robbery, theft, and dealing in marijuana) and two misdemeanor convictions as an adult. And Yoakum was on probation at the time of the instant offense. We are not persuaded that the trial court gave too much weight to his criminal history.

Yoakum also asserts that the trial court failed to identify two proffered mitigators, namely, his guilty plea/acceptance of responsibility for his actions, and his remorse. It is well settled that the finding of mitigating circumstances is within the discretion of the trial court. Hackett v. State, 716 N.E.2d 1273, 1277 (Ind. 1999). The trial court is not

obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Matshazi v. State, 804 N.E.2d 1232, 1239 (Ind. Ct. App. 2004), trans. denied. Additionally, trial courts are not required to include in the record a statement that it considered all proffered mitigating circumstances, only those that it considered significant. Id.

A guilty plea is not necessarily a significant mitigating factor. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Here, in exchange for Yoakum's plea to the Class B felony, the State dismissed several remaining charges and agreed to dismiss a petition for a probation violation in another case. Thus, Yoakum received a substantial benefit in exchange for his plea. See Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999) (holding no abuse of discretion where trial court did not find defendant's guilty plea mitigating where defendant received benefits for plea). The trial court did not abuse its discretion when it did not identify Yoakum's guilty plea as a mitigating circumstance. And it is well settled that a trial court is in the best position to observe a defendant's demeanor and determine whether his remorse is genuine. See Golden v. State, 862 N.E.2d 1212, 1216 (Ind. Ct. App. 2007), trans. denied. Here, we cannot say that the trial court abused its discretion when it did not identify Yoakum's remorse as a mitigator.

Yoakum maintains that a proper weighing of the aggravators and mitigators justifies a ten-year executed sentence. But that contention rests on his assertion that the trial court identified an invalid aggravator and failed to find proffered mitigators. Because Yoakum did not prevail on those issues, he cannot demonstrate that the trial

court improperly weighed the aggravators and mitigators. The trial court did not abuse its discretion when it sentenced Yoakum to twenty years, with fifteen years executed.

Issue Two: Appellate Rule 7(B)

Yoakum next contends that his sentence is inappropriate in light of his character.[2] If the sentence imposed is authorized by statute, we will not revise or set aside the sentence unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B); McCann v. State, 749 N.E.2d 1116, 1121 (Ind. 2001). On appeal, Yoakum explains that he had a very bad childhood. He was in the foster care system, and he was sexually abused, which has caused lasting psychological trauma. Yoakum emphasizes that he currently has a good support system and has developed a strong work ethic.

While we acknowledge Yoakum's life struggles, we cannot ignore the extent of his criminal history, which reflects very poorly on his character. And despite his stated intent to achieve a law-abiding lifestyle, he has failed at previous attempts at rehabilitation. Further, the nature of the offense supports the sentence. Yoakum stated that he "did not really need money" when he committed the instant offense, and he admitted that his crimes were "typically . . . motivated by a sense of excitement, grandiosity, and entitlement." Green App. at 18. We cannot say that Yoakum's sentence is inappropriate in light of the nature of the offense and his character.

Affirmed.

ROBB, J., and MAY, J., concur.

[2] Yoakum makes no contention that his sentence is inappropriate in light of the nature of the offense.